

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MATTHEW G. SILVA,
Plaintiff,

v.

C. J. MERRITT, *et al.*,
Defendants.

Case No. C07-5482BHS/KLS

ORDER TO SHOW CAUSE WHY
CASE SHOULD NOT BE
DISMISSED UNDER 28 U.S.C. §
1915 (g)

This matter comes before the Court on Plaintiff's application to proceed *in forma pauperis* and a proposed civil rights complaint under 42 U.S.C. § 1983. (Dkt. # 1). Court records indicate, however, that Plaintiff has filed at least three civil actions *in forma pauperis* in the United States District Courts that have been dismissed as frivolous or for failure to state a claim. Those cases include: *Silva v. Bush, et al.*, CV-06-984-JLR (Western District of Washington); *Silva v. Clarke, et.al.*, CV-05-414-MWL (Eastern District of Washington); and *Silva v. State of Washington, et al.*, C-98-659-WLD (Western District of Washington).¹

In addition, Plaintiff has filed a fourth action, CV-06-2289-JAT/ECV, in the District of Arizona (Phoenix), which was dismissed for failure to state a claim. And, in a fifth action filed in the Eastern District of Washington, Case No. CV-7-210-RHW, Plaintiff has been ordered to show cause why that

¹The Court may take judicial notice of court records. *MGIC Indemn. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986).

1 action should not be dismissed under 28 U.S.C. § 1915 (g). Plaintiff responded to Judge Whaley's order
2 to show cause in that case, stating only that the fourth action he filed in the District of Arizona is on
3 appeal and should not be counted against him. (Dkt. # 7).

4 Regardless of the status of Plaintiff's fourth and fifth cases, Section 1915 (g) of the United States
5 Code applies if a prisoner has brought three or more actions previously dismissed as frivolous, malicious
6 or that failed to state a claim:

7 In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or
8 proceed under this section if the prisoner has, on *3 or more prior occasions*, while
9 incarcerated or detained in any facility, brought an action or appeal in a court of the United
10 States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a
11 claim on which relief may be granted unless the prisoner is under imminent danger of
12 serious physical injury.

[Emphasis added.]

12 **ACCORDINGLY, IT IS ORDERED:**

- 13 (1) Plaintiff shall show cause by **November 16, 2007**, why this case should not be dismissed
14 pursuant to 28 U.S.C. § 1915 (g). In the alternative, Plaintiff may pay the full \$350.00
15 filing fee for this action. **If the Plaintiff does not respond within the time period**
16 **specified, or Plaintiff does not show sufficient cause as noted above, the Court will**
17 **recommend dismissal of this case pursuant to 28 U.S.C. § 1915 (g); and;**
18 (2) The Clerk is directed to send a copy of this Order to Plaintiff.

20 DATED this 17th day of October, 2007.

22
23 

24 Karen L. Strombom
25 United States Magistrate Judge
26
27
28